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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/776,732	02/10/2004	Bret O. Baynham	2380.009	2814
21917	7590	11/17/2005		
MCHALE & SLAVIN, P.A. 2855 PGA BLVD PALM BEACH GARDENS, FL 33410			EXAMINER AMARELD JR, ROBERT W	
			ART UNIT	PAPER NUMBER
			3738	
DATE MAILED: 11/17/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/776,732

Applicant(s)

BAYNHAM ET AL.

Examiner

Robert W. Amareld, Jr.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12, 15 is/are rejected.
- 7) ☒ Claim(s) 13, 14, 16 and 17 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 2/10/04 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 11/8/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Drawings

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: The description is replete with references to structure with indicated numbers that are not present in the drawings, for example rods (50), arm (22), channel (21). Furthermore the numbering of the drawings is sloppy and unclear in some instances. Additionally, some structure is not adequately displayed, for example, (23), (31), (78), please be sure that all indicated structures are clearly presented in a concise manner. Figure 6 appears to be a reference to a main portion of the invention and is not clearly presented, figure 1 indicates it as a 3-d circular structure, while figure 6 does not convey any of this information and it appears to be a square flat piece, this drawing should be more clearly presented. The drawings must show every feature of the invention specified in the claims. Therefore, the "counter sunk bore" listed in claims 8 and 10 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top

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margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

In addition to Replacement Sheets containing the corrected drawing figure(s), applicant is required to submit a marked-up copy of each Replacement Sheet including annotations indicating the changes made to the previous version. The marked-up copy must be clearly labeled as "Annotated Sheets" and must be presented in the amendment or remarks section that explains the change(s) to the drawings. See 37 CFR 1.121(d)(1). Failure to timely submit the proposed drawing and marked-up copy will result in the abandonment of the application.

Specification

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: The terminology and structure of "counter sunk bore" found in **claims 8 and 10** is not found within the specification.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Drewry (US Pat# 5947966). Drewry discloses a linking system with a bar (216) and two connectors (200), both connectors having a groove (218,219) transverse to the longitudinal axis, a lock (241) being in each connector in bores or channel (225), the lock also having an actuating arm portion extending into grooves (218,129) which will obstruct the groove and frictionally engage a rod. The grooves (218, 219) have opposing side walls (220,221) around each groove, and the lock having a cam surface (241) (cam being a wedge for clamping two pieces together), where rotations causes the arm to move into the groove and obstruct it. The materials chosen are high strength materials, such as titanium, which is inherently reinforced materials (column 9, lines 48-55).

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

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Claims 1-6, 7 and 9 are rejected under 35 U.S.C. 102(e) as being anticipated by McBride (US Pat# 6887241). McBride discloses a linking system with a bar (108) and two connectors (38), both connectors having a groove (40) transverse to the longitudinal axis, a lock (42), having a key portion on the top of it (76,82), being in each connector (38) in bores or channel (60), the lock also having an actuating arm (68) portion extending into grooves (40) which will obstruct the groove and frictionally engage a rod (28). The grooves (40) have opposing side walls (50) around each groove, and the lock having a cam surface (78, 70), where rotations causes the arm (68) to move into the groove (40) and obstruct it. The materials chosen are high strength materials, such as titanium, which is inherently reinforced materials (column 12, lines 27-29) and the connector also including reinforcing surfaces 46 and 48. The key portion (76, 82) of the cam lock (42, column 5, lines 13-15) may lock to the body and prevent disengagement

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 2, 11, 12 & 15 are rejected under 35 U.S.C. 102(e) as being anticipated by Young. Young discloses a cross-link system (330) with a first and second connectors (176, 178) having grooves with an actuator arm (36) extending into the first groove to frictionally engage a rod, the actuator arm also being a lock. The cross link system may include a first and second shaft (334,336) joined by a pin (332), which has a u-shape with extending arms (figure 23) near sections 343,344 & 345. , both shafts

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having a bore, with the free ends of the pin passing through the bore securing the two pins together.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 1, 2, 7-10 rejected under 35 U.S.C. 103(a) as being unpatentable over McBride (US Pat# 6887241). McBride is explained supra. However McBride fails to disclose a counter sunk bore. It would have been an obvious matter of design choice to modify the bore to be counter sunk, since applicant has not disclosed that using a counter sunk bore provides any advantage, or solves a stated problem, or is used for any particular purpose. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with the type of bore taught by McBride or the claimed counter sunk in claim(s) 8,10 because both bores perform the same function of providing a slot for the fastening means or lock means.

Allowable Subject Matter

Claims 13, 14, 16 & 17 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Selvitelli, US Pat #6524315 – a rod locking system; Apfelbaum, US Pat# 5928233- spinal fixation device; Pfaifer, US Pat# 5702393- an assembly device; Richelsoph, US Pat# 6010503- a locking mechanism .

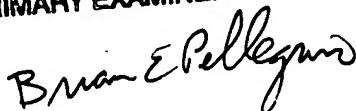
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert W. Amareld, Jr. whose telephone number is 571-272-6170. The examiner can normally be reached on M-F 9am -5pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine M. McDermott can be reached on 571-272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

BRIAN E. PELLEGRINO
PRIMARY EXAMINER

RWA



Robert W Amareld, Jr.
Examiner
Art Unit 3738

